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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018

Opinion No. 12/2018 concerning Rashad Ramazanov (Azerbaijan)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed that mandate and most recently extended it for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 30 August 2017 the Working Group transmitted to the Government of Azerbaijan a communication concerning Rashad Ramazanov. The Government replied to the communication on 30 October 2017. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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Submissions

Communication from the source

4. Rashad Ramazanov, born in 1982, is of Azerbaijani origin and usually resides with his family in Baku.

5. The source reports that, in 2004, Mr. Ramazanov graduated from Baku State University with a Masters' Degree in ecology before going on to study for a PhD in philosophy, sociology and law at the Institute of National Sciences Academy of Azerbaijan.

6. Mr. Ramazanov is reportedly the author of many articles and seven books, including *One Hundred Muslims*, published in 2005, in which he criticized the former President of Azerbaijan, Heydar Aliyev. Mr. Ramazanov's academic articles have been published by the National Sciences Academy of Azerbaijan and other institutes.

7. According to the source, Mr. Ramazanov has also been an active and outspoken political commentator on social media and has published articles critical of the Government on his Facebook page, under the pen name Rashad Heqiqet Ağgaddin (see http://on.fb.me/12G0WJE). He has reportedly received many warnings and threats from the Azerbaijani authorities for his critical writing online, and has received death threats from radical Islamist extremists in Baku for his liberal views.

8. As a result of such threats, he reportedly fled to Turkey in 2009 with his wife and 1-year-old daughter. They returned to Azerbaijan a year later, but the threats resumed and he lived apart from his family until 2012, for their protection. At the time of his arrest in May 2013, his wife was heavily pregnant with their second child.

9. According to the source, on 9 May 2013, at around 1 p.m., Mr. Ramazanov was arrested in Baku near the 20 January metro station by plainclothes officers from the Organized Crime Department of the Ministry of Internal Affairs of Azerbaijan. Mr. Ramazanov had been on his way back from a publishing house. The officers reportedly did not show any arrest warrant or other decision by a public authority, nor did they notify Mr. Ramazanov of the reasons for his arrest, thereby acting in violation of article 19.4.1 of the Code of Criminal Procedure of Azerbaijan[1] and article 9 (2) of the International Covenant on Civil and Political Rights.

10. The source reports that the officers took Mr. Ramazanov to the Organized Crime Department where they searched him and subsequently claimed to have discovered 9.057 grams of heroin in his trouser pocket. Mr. Ramazanov denied the charges and insisted that the drugs had been planted on him during his arrest. He added that while in detention, officers forced him to touch the drugs.

11. The source also reports that on 10 May 2013, the Baku City Narimanov District Court remanded Mr. Ramazanov in custody for three months under article 234.4.3 of the Criminal Code (manufacturing, purchase, storage, transfer, transportation or sale of chemical components with a view to the illegal manufacturing and processing of narcotics or psychotropic substances, in a large quantity). According to the source, crimes committed under this article of the Criminal Code carry a penalty of up to 12 years in prison.

12. The source further reports that Mr. Ramazanov's family and lawyer received no information about his whereabouts for four days. His lawyer was only allowed to meet him in police custody on 17 May 2013, despite repeated requests. Mr. Ramazanov reportedly told his lawyer, in the presence of an investigator, that he had been beaten by police officers in the police car on the day of his arrest, and again upon interrogation during the first three days of his detention. The lawyer had also stated that had seen injuries on Mr. Ramazanov's face, neck and hands.

[1] According to article 19.4.1 of the Code of Criminal Procedure, the prosecuting authority is to secure the rights of the suspect or accused to have the assistance of a defence counsel from the moment of detention or arrest, as the suspect before the first interrogation or as the accused as soon as charges have been laid.

13. According to the source, the Azerbaijani authorities are not known to have carried out any investigation into Mr. Ramazanov's allegations of torture and other ill-treatment. Requests for Mr. Ramazanov to undergo medical examination at the time were reportedly also ignored.

14. The source refers to article 157.3 of the Code of Criminal Procedure of Azerbaijan, pursuant to which a person arrested on the grounds of a court decision may not be held in a temporary detention facility for longer than 24 hours, and will be transferred, within that period, to the investigating authority's remand facility (this period is not to include the time spent transporting the arrested person to the remand facility). Mr. Ramazanov, however, was inexplicably kept in police custody for 10 days until 20 May 2013, when he was transferred to the Kurdakhani pretrial detention centre (Baku prison No. 1). He is currently detained in Baku prison No. 2.

15. According to the source, Mr. Ramazanov's case was referred to the Baku serious crimes court on 7 August 2013. The only witnesses in his trial were reportedly the officials who detained him. The source reports that on 13 November 2013, the Baku serious crimes court sentenced Mr. Ramazanov to nine years in prison. His sentence was upheld by the Baku Court of Appeal on 16 January 2014 and by the Supreme Court of Azerbaijan on 14 May 2014.

16. The source refers to the 2016 concluding observations of the Committee against Torture, in which the Committee expressed concern about numerous and persistent allegations that torture and ill-treatment were routinely used by law enforcement and investigative officials in Azerbaijan, or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings. The Committee was particularly concerned that not a single individual had been prosecuted between 2010 and 2015, despite hundreds of complaints having been filed, and called on the Azerbaijani authorities to apply a zero tolerance approach to the continuing problem of torture and to the practice of impunity. It further called on the authorities to guarantee detainees prompt and unimpeded access to an independent lawyer of their choice[2] from the moment of arrest.

17. According to the source, there is allegedly a clear pattern of the Azerbaijani authorities using charges of drugs or firearms possession, "hooliganism" or tax evasion to arrest and imprison writers and journalists critical of the authorities. In this regard, the source refers to the 2016 concluding observations of the Human Rights Committee, in which the Committee expressed concern about consistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists and bloggers on allegedly politically motivated, trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office and incitement to violence or hatred. The Committee called on the Azerbaijani authorities to take immediate steps to end any repression against these categories of persons and to take all measures necessary to guarantee the full enjoyment of freedom of expression by everyone in practice.[3]

18. Noting that Mr. Ramazanov is well-known for his anti-government posts online, the source believes that the charges against him are politically motivated and that he is imprisoned solely for having exercised his right to freedom of expression. The source thus calls for his immediate and unconditional release and for his conviction to be quashed.

19. The source also alleges that Mr. Ramazanov was effectively subjected to an enforced disappearance for four days from the moment of his arrest. In this connection, the source notes that the Working Group on Enforced or Involuntary Disappearances has repeatedly clarified that "there is no time limit, no matter how short, for an enforced disappearance to occur."[4] The source notes that as a party to the International Convention

[2] See CAT/C/AZE/CO/4 paras. 8, 9 and 13.

[3] See CCPR/C/AZE/CO/4, paras. 36 (a) and 37.

[4] Office of the United Nations High Commissioner for Human Rights, "Enforced disappearances: high time to put the issue at the top of UN Member States' agendas", press release, 24 October 2016.

for the Protection of All Persons from Enforced Disappearance, Azerbaijan is obliged to refrain from acts that would defeat or undermine the objective and purpose of the Convention.

20. The source further reports that Mr. Ramazanov was held in solitary confinement for 15 days, from 23 January 2017. His family and lawyer tried to visit him but were denied permission. The reason for this punishment remains unknown. On 7 February 2017, Mr. Ramazanov's family was informed that he had been released from solitary confinement and was subsequently allowed to visit him.

21. According to the source, Mr. Ramazanov is not receiving the medical treatment that he requires. He suffers from a number of health problems as a result of his imprisonment, the most serious being tuberculosis, which he contracted when he was reportedly arbitrarily detained for several months in 2005 by the Ministry of Internal Affairs following his criticism of Heydar Aliyev, the former President of Azerbaijan, in his book *One Hundred Muslims*.

22. In this connection, the source notes that in 2016, the Human Rights Committee expressed concern regarding the treatment of prisoners and called on the Azerbaijani authorities to improve conditions of detention in accordance with the International Covenant on Civil and Political Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).[5]

Response from the Government

23. Rashad Aghaddin oghlu Ramazanov, born in Masalli district in 1982, is a national of Azerbaijan.

24. He was detained by police officers on 9 May 2013, when a large amount of heroin (9.057 grams) was found on his person. On 10 May 2013, Mr. Ramazanov was found criminally liable.[6]

25. The preliminary investigation into the criminal case was completed on 30 July 2013, and the case was transmitted to the Baku serious crimes court for examination.

26. On 13 November 2013, Mr. Ramazanov was found guilty by the Baku serious crimes court, under article 234.4.3 of the Criminal Code (illegal production, preparation, obtaining, keeping, transporting, sending or selling of narcotics, psychotropic substances or its precursors in a large amount) , and sentenced to nine years' imprisonment (from 9 May 2013 to 9 May 2022).

27. During the court hearing, in addition to the police officers who had detained Mr. Ramazanov, two other individuals were interrogated as witnesses.

28. The Government informs the Working Group that the allegations of beating, inhuman treatment and other illegal actions by police officers against Mr. Ramazanov have been investigated thoroughly. A forensic medical examination was ordered, and the opinion of the Association of Forensic Medical Expertise and Pathological Anatomy of the Ministry of Health, dated 24 June 2013, was that no injury or traces thereof had been found on Mr. Ramazanov's body. Furthermore, Mr. Ramazanov, like all other prisoners, was thoroughly examined on admission to the Baku pretrial detention facility and no injuries were found. The application to initiate a criminal case in that regard was therefore rejected on 5 July 2013.

29. Mr. Ramazanov's appeal was rejected by decision of the Baku Court of Appeal, dated 16 January 2014, and the 13 November 2013 judgment of the Baku serious crimes court was upheld. On 21 April 2015, the Supreme Court ruled that the decision of the Baku Court of Appeal should be upheld.

Available at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20752&LangID=E.

[5] See CCPR/C/AZE/CO/4 para. 23.

[6] The Working Group presumes that this means that Mr. Ramazanov was charged by the said court.

30. On 20 February 2014, following his conviction, Mr. Ramazanov was transferred from the Baku pretrial detention facility to prison No. 2. On arrival, he was provided with the "necessary housing conditions". His rights and duties and the rules of execution of the sentence were explained to him.

31. According the Government, Mr. Ramazanov is recorded as a prisoner inclined to file false, slanderous complaints regarding prisoners and prison officers, to create confusion among fellow inmates, to obstruct the normal working activity of the prison, and to attack prison officers while serving his sentence.

32. He has not been exposed to torture, inhuman or degrading treatment during the serving of his sentence and his right to personal security is ensured as prescribed by law. He has used his rights to hold meetings and make telephone calls, without any restriction. While in detention in prison No. 2, he has met with his lawyers. In May 2016, during their country visit to Azerbaijan, members of the Working Group on Arbitrary Detention met with Mr. Ramazanov.

33. Mr. Ramazanov has undergone regular medical examination for tuberculosis. Check-ups have been conducted for prophylactic purposes, and no worsening of his condition has been observed. In February 2016, Mr. Ramazanov underwent detailed clinical and laboratory examinations in a treatment facility, for a minor neurological disorder, and outpatient treatment was prescribed. As a result of that treatment, he recovered. His health is currently considered satisfactory. He is "ensured with medical service, his physiological indicators are norm and no tuberculosis aggravation is observed".

34. Mr. Ramazanov's rights to submit an application to the court requesting that he be moved to another type of prison after serving two thirds of his sentence (on 9 May 2019), or to be released on parole after serving three quarters of his sentence (on 8 February 2020) have been explained to him.

35. Finally, the Government states that the claims listed in the Working Group's request: arbitrary arrest of Mr. Ramazanov; his detention by unknown persons without notification; the reason for his arrest being related to criticism of the Government; inhumane treatment and violence against him by the authorities; and negligence towards his complaints have been found to be unsubstantiated.

Further comments from the source

36. On 1 November 2017, the reply of the Government was sent to the source for comment. Comments were provided on 15 November 2017.

37. The source notes that with regard to the circumstances of the arrest, the Government has submitted that Mr Ramazanov was detained by police officers on 9 May 2013, that he was found to have a large amount of heroin (9.057 grams) on his person, and that he was found criminally liable on 10 May 2013. According to the source, the Government has failed to further clarify the circumstances of his arrest. The source refers to its original submission, which stated that Mr. Ramazanov was detained by plainclothes officers, who did not notify him of the reasons for his arrest, in violation of Azerbaijan's obligations under international human rights law. Mr. Ramazanov insists that the drugs were planted on him, and that law enforcement officers forced him to touch the drugs while in detention.

38. The source also notes that Mr. Ramazanov's claim is in line with the findings of Human Rights Watch, which has documented a well-established pattern of Azerbaijan's authorities using false, politically-motivated criminal charges to jail dissenters, including the planting of narcotics.[7] The source reiterates that in its opinion Mr. Ramazanov is in fact being detained for having peacefully exercised his right to freedom of expression, and has been convicted on false charges.

39. Furthermore, according to the source, the Government, in its response, does not address the fact that Mr. Ramazanov was subjected to enforced disappearance for a period

[7] See Human Rights Watch, Harassed, Imprisoned, Exiled. Azerbaijan's Continuing Crackdown on *Government Critics, Lawyers, and Civil Society* (20 October 2016).

of four days from the time of his arrest, or that he was unable to access legal counsel until 17 May 2013, eight days after his arrest, despite repeated requests by his counsel to him.

40. The Government states that during the court hearing, in addition to the police officers who had detained Mr. Ramazanov, two other individuals were interrogated as witnesses. The source notes that this statement contradicts the information received that only the arresting officers testified against Mr. Ramazanov at his trial. With regard to these two individuals, the source was informed that they had testified to the effect that they knew the police officers, and that they would trust the police officers to tell the truth. However, neither of the individuals testified to the allegations raised against Mr. Ramazanov. The source alleges that the use of political volunteers hired by the police to provide testimony along the described lines is common practice in Azerbaijan.

41. The Government also submits that the allegations of ill-treatment of Mr. Ramazanov while in police custody immediately after his arrest were thoroughly investigated and subsequently dismissed. In this respect, the source reiterates that Mr. Ramazanov's lawyer, who met with Mr. Ramazanov on 17 May 2013, saw injuries on his client's face, neck and hands.

42. With regard to the timing of the medical examinations, the source notes that an examination carried out at the end of June regarding allegations of ill-treatment that had taken place at the beginning of May would not necessarily reveal any injuries or traces thereof. With regard to the examination upon admission to the pretrial detention facility, the source notes that Mr. Ramazanov was only transferred to the pretrial facility on 20 May 2013 (in contravention of domestic law that provides for such transfer within 24 hours of the judicial remand order being issued) and that accordingly the same observation applies here. In addition, the source refers to the recommendation made to the Azerbaijani authorities by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, following its 2016 country visit, "to take resolute action to ensure that the return of remand prisoners to police facilities, for whatever purpose, is sought and authorised only when there is absolutely no other alternative, and for the shortest time possible".[8]

43. The source reiterates that Mr. Ramazanov's requests to see, in a timely manner, a doctor of his own choice, who could have documented the medical findings to prove the allegations of ill-treatment, were repeatedly ignored. In this regard, the source notes that the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommended that instructions be issued on the subject of the rights of persons in police custody to have access to a doctor, stipulating that a request by a detained person to see a doctor should always be granted and that a person taken into police custody has the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police.[9]

44. The source observes that the investigation by the Azerbaijani authorities cannot be considered adequate. In this connection, the source refers to the jurisprudence of the European Court of Human Rights,[10] which with regard to the examination of claims of ill-treatment by the police, in particular in cases of incommunicado detention, has repeatedly concluded that the mere examination of medical reports, without hearing the individual or questioning the officers alleged to have committed the ill-treatment, falls short of the procedural requirements under article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). The examination of medical records alone does not constitute a proper examination of the evidence comprising all reasonable inquiries with a view to meeting the standard of an in-depth and effective investigation. In the case at hand, Mr. Ramazanov was not heard and no police officers were questioned in relation to the allegations of ill-treatment.

[8] Report to the Government of Azerbaijan on the visit to Azerbaijan from 20 to 30 November 2016.

[9] Ibid.

[10] See, inter alia, European Court of Human Rights, *Egiguren v. Spain* (application No. 47303/08), judgment of 16 October 2012, paras. 38–42.

45. Furthermore, the source notes that the Government's response regarding the allegations of ill-treatment does not address Mr. Ramazanov's period of incommunicado detention, which may be considered a form of ill-treatment (for himself and his family).

46. The source also notes that the Government submits that Mr. Ramazanov was "provided with the necessary housing conditions." In this respect, the source wishes to convey the information received that the cells are very crowded, insufficient cleaning materials are provided, and in winter the cells are always very cold. Mr. Ramazanov's complaints on these issues have reportedly not been heard.

47. In addition, Mr. Ramazanov spent 15 days in solitary detention in January 2017. According to information received by the source, he was put in isolation subsequent to prison guards discovering a notebook in which he was documenting the conditions of his detention. Upon discovery of the notebook, he was questioned, beaten and put in solitary confinement. Since then, Mr. Ramazanov no longer has access to writing materials, in contravention of the Nelson Mandela Rules.

48. Lastly, with regard to Mr. Ramazanov's access to adequate medical care, the Government submits that his "health is satisfactory, he is insured with medical service, his physiological indicators are norm and no tuberculosis aggravation is observed". The source notes that this submission contradicts information received that Mr. Ramazanov is not allowed to see the prison doctors when he wants to, and that as a consequence of this denial of access to adequate medical care, his tuberculosis is not being treated properly.

Discussion

49. The Working Group wishes to thank the source and the Government for their engagement and for their submissions in relation to the detention of Mr. Ramazanov.

50. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.[11]

51. The Working Group recalls that, where it is alleged that a person has not been afforded by a public authority certain procedural guarantees to which he or she was entitled, the burden of proof should rest with the public authority because the latter is in a better position to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law.

52. Both parties have recognized that Mr. Ramazanov was arrested in Baku on 9 May 2013. The source has alleged, and the Government did not rebut, that the officers from the Organized Crime Department of the Ministry of Internal Affairs of Azerbaijan who participated in his arrest were wearing plain clothes and appeared without any arrest warrant or other decision by a public authority. During the arrest, Mr. Ramazanov was not informed of the reasons for his arrest.

53. The Working Group also notes that in the context of its country visit to Azerbaijan from 16 to 25 May 2016, it received repeated allegations of the lack of legal basis justifying the deprivation of liberty of individuals expressing opinions not in line with those of the Government.[12]

54. In the light of the foregoing, the Working Group considers that no legal basis was invoked during the arrest of Mr. Ramazanov to justify his deprivation of liberty, and that his detention is thus arbitrary, falling within category I.

55. The Working Group is aware that Mr. Ramazanov is a recognized writer and journalist in Azerbaijan, who was detained for several months in 2005 after criticizing a former ruler of Azerbaijan in a book called *One Hundred Muslims*, and is known for his anti-government posts online.

[11] See A/HRC/19/57, para. 68.
[12] See A/HRC/36/37/Add.1, para. 80.

56. The source has alleged, and the Government has not denied the allegations, that the authorities of Azerbaijan planted drugs on Mr. Ramazanov's person during his arrest and that the officers forced him to touch the drugs. The Working Group notes that this type of detention and fabrication of crimes against human rights defenders and journalists has been identified by international human rights bodies, including the Human Rights Committee and the Working Group, as a practice employed in Azerbaijan.

57. The Working Group notes that in 2016, the Human Rights Committee, having reviewed the fourth periodic report of Azerbaijan (CCPR/C/AZE/4), expressed its concern regarding consistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists and bloggers on allegedly politically motivated trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred etc.[13]

58. During its country visit to Azerbaijan in 2016, the Working Group collated information from numerous sources and concluded that human rights defenders, journalists, political opponents and religious leaders who criticized the Government and its policies faced limitations to their work and personal freedom.[14] The Working Group also recalls its previous opinions on Azerbaijan where it found detentions of members of a minority religious community as well as of a journalist and a human rights defender to be arbitrary, falling within categories II, III and V.[15]

59. In view of the above, the Working Group concludes that Mr. Ramazanov's deprivation of liberty results from his exercise of the right to freedom of expression as guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. It is thus arbitrary, falling within category II.

60. Given its finding that the deprivation of liberty of Mr. Ramazanov is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. A trial did, however, take place and the source has submitted that the detention of Mr. Ramazanov is also arbitrary under category III.

61. The Working Group notes that both parties to this procedure have recognized that Mr. Ramazanov was accused of drug crimes and sentenced to nine years in prison. In this regard, the source has alleged that several of Mr. Ramazanov's due process rights were violated. According to the source, he was kept in police custody for 10 days until 20 May 2013, in breach of the Code of Criminal Procedure of Azerbaijan whereby a person arrested on the grounds of a court decision may not be held in a temporary detention facility for longer than 24 hours, before expiry of which he is to be transferred to the investigating authority's remand facility (this period is not to include the time spent transporting the arrested person to the remand facility). The Working Group notes that the Government has not denied this allegation.

62. Furthermore, Mr. Ramazanov's family and lawyer had no information about his whereabouts for four days, and his lawyer was only allowed to meet him in police custody on 17 May 2013, despite repeated requests. In 2010, the Working Group and several special procedure mandate holders completed a joint study on global practices in relation to secret detention in the context of counter-terrorism. The experts reiterated that international law prohibited secret detention, which violated several human rights standards, including the right to fair trial.[16] The experts found that certain practices inherent in secret detention, such as the use of secrecy and insecurity caused by the denial of contact with the outside world, placed detainees in a situation of heightened vulnerability to violations of the right to fair trial, including forced confession of guilt, denial of the presumption of innocence, inability to challenge the lawfulness of detention, denial of access to legal representation, and torture

[13] See CCPR/C/AZE/CO/4, para. 36 (a).
[14] See A/HRC/36/37/Add.1, para. 80.
[15] See opinions No. 42/2015; No. 59/2013; and No. 22/2011.
[16] See A/HRC/13/42, paras. 27 and 282.

and ill-treatment.[17] Moreover, in its resolution 37/3, the Human Rights Council stressed that no one should be held in secret detention and urged States to ensure that all persons held in detention under their authority were provided with access to the courts and to investigate all alleged cases of secret detention, including under the pretext of counter-terrorism.

63. The Working Group considers that the extensive police custody of Mr. Ramazanov in violation of domestic legislation, his secret detention for a period of several days by the Azerbaijani authorities and the denial of his right to access to his defence lawyer imply that the Government breached its international obligations in relation to the fair trial and due process guarantees recognized by articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights. The Working Group concludes that these violations of the right to a fair trial are of such gravity as to give the deprivation of liberty of Mr. Ramazanov an arbitrary character according to category III.

64. Furthermore, the Working Group expresses its concerns at the allegations of torture and other cruel and inhuman treatment or punishment put forward by the source, which would appear to reveal a prima facie breach of the absolute prohibition of torture and ill-treatment. The absolute prohibition of torture and ill-treatment is a peremptory norm of international law, as well as of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 1 of the Nelson Mandela Rules. The Working Group will thus refer this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

Disposition

65. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Rashad Ramazanov, being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and of articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

66. The Working Group requests the Government of Azerbaijan to take the steps necessary to remedy the situation of Mr. Ramazanov without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

67. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Ramazanov immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

68. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Ramazanov and to take appropriate measures against those responsible for the violation of his rights.

69. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

Follow-up procedure

70. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

[17] See also opinion No. 14/2009, para. 21 and opinion No. 5/2001, para. 10 (iii), in which the Working Group found that secret detention was per se a violation of the right to a fair trial under category III.

(a) Whether Mr. Ramazanov has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Ramazanov;

(c) Whether an investigation has been conducted into the violation of Mr. Ramazanov's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Government with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

71. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

72. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

73. The Government should disseminate through all available means the present opinion among all stakeholders.

74. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[18]

[*Adopted on 19 April 2018*]

[18] See Human Rights Council resolution 33/30, paras. 3 and 7.

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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018

Opinion No. 13/2018 concerning Nabeel Ahmed Abdulrasool Rajab (Bahrain)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 26 January 2018 the Working Group transmitted to the Government of Bahrain a communication concerning Nabeel Ahmed Abdulrasool Rajab. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Nabeel Ahmed Abdulrasool Rajab, born in 1964, is a national of Bahrain.

5. According to the source, Mr. Rajab is a prominent human rights defender in Bahrain, who has been arrested, detained, prosecuted and released on multiple occasions since 2012 on charges relating to his human rights work.

6. The source notes that the Working Group, in its opinion No. 12/2013 (Bahrain), concluded that the detention of Mr. Rajab was arbitrary when he was arrested and detained on charges of insulting statutory bodies, of participating in illegal demonstrations and calling upon others to join, and of libel against the residents of the town of Al-Muh.. .q.[1]

Current arrest, detention and conviction

7. According to the source, on 13 June 2016 Mr. Rajab was arrested again by the Bahraini authorities, and he has been held in detention pending the adjudication of two separate cases, relating to allegedly:

(a) Spreading false news abroad which damages the national interest (pursuant to art. 134 of the Penal Code)[2] (in reference to television interviews that he gave in 2015 and 2016); and

(b) Spreading false rumours in wartime (pursuant to art. 133 of the Penal Code),[3] insulting governing authorities (pursuant to art. 216 of the Penal Code),[4] and insulting a foreign country (pursuant to art. 215 of the Penal Code)[5] (in reference to comments made on Twitter in March 2015 alleging torture in Bahraini prisons and criticizing the Saudi-led campaign in Yemen).

8. The source reports that on 10 July 2017, the Third Circuit Lower Criminal Court found Mr. Rajab guilty of spreading false news abroad and sentenced him to two years in prison. The court conducted multiple in absentia hearings, despite notice from Mr. Rajab's doctors that he was recovering from surgery and would be unable to attend. The source notes that he has allegedly been held in solitary confinement for long periods and subjected to ill-treatment during his periods of detention. He reportedly continues to suffer from a myriad of medical concerns and conditions, including hypertension, cardiac arrhythmia, gastritis, irritable bowel syndrome, immunodeficiency and thyroid problems. During his time in detention, he has also required surgery to remove ulcerated tissue and fatty lumps from his lower back. Despite Mr. Rajab's medical problems, the presiding judge has refused to release him on bail.

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[1] See opinion No. 12/2013, para. 42.

[2] Government of Bahrain, Penal Code, 1976, available in English at https://www.unodc.org/res/cld/document/bhr/1976/bahrain_penal_code_html/Bahrain_Penal_Code_1976.pdf.
See art. 134: "A punishment of imprisonment for at least 3 months and a fine of at least BD 100, or either penalty, shall be inflicted upon every citizen who deliberately releases abroad false or malicious news, statements or rumours about domestic conditions in the State, so as to undermine financial confidence in the State or adversely affect its prestige or position, or exercises in any manner whatsoever activities that are harmful to the national interests."

[3] Ibid., see art. 133: "A punishment of imprisonment for a period not exceeding 10 years shall be inflicted upon any person who deliberately announces in wartime false or malicious news, statements or rumours or mounts adverse publicity campaigns, so as to cause damage to military preparations for defending the State of Bahrain or military operations of the Armed Forces, to cause people to panic or to weaken the nation's perseverance."

[4] Ibid., see art. 216: "A person shall be liable for imprisonment or payment of a fine if he offends, by any method of expression the National Assembly, or other constitutional institutions, the army, law courts, authorities or government agencies."

[5] Ibid., see art. 215: "A punishment of imprisonment for a period of no more than two years or a fine of no more than BD 200 shall be inflicted upon any person who offends in public a foreign country or an international organization based in the State of Bahrain or its president or representative."

9. On 22 November 2017, the High Criminal Court in Manama upheld that verdict, and on 15 January 2018, the Court of Cassation also confirmed his conviction and sentence. According to the source, the decision by the Court of Cassation is final, and Mr. Rajab has exhausted all domestic remedies for relief.

10. In addition to that conviction, Mr. Rajab is reportedly also in the midst of a trial regarding his comments on Twitter concerning torture in Bahraini prisons and the actions of the Saudi-led military coalition in Yemen. The source informs the Working Group that Mr. Rajab faces up to 15 years in prison on these charges, and that his hearings have been postponed and rescheduled on multiple occasions. The court has held 21 hearings in connection with this case over a period of 19 months, from 12 July 2016 until the date of the source's submission in January 2018, without reaching a determination.

Joint communications by special procedures

11. Mr. Rajab has been the subject of a significant number of joint communications by special procedure mandate holders, notably BHR 6/2004, sent on 6 October 2004; BHR 3/2005, sent on 25 July 2005; BHR 1/2010, sent on 5 March 2010; BHR 4/2011, sent on 22 March 2011; BHR 12/2011, sent on 16 June 2011; BHR 18/2011, sent on 9 September 2011; BHR 6/2012, sent on 24 July 2012; BHR 3/2013, sent on 23 May 2013; BHR 13/2014, sent on 14 October 2014; BHR 2/2015, sent on 15 April 2015; BHR 10/2015, sent on 14 December 2015; and BHR 3/2016, sent on 4 July 2016. The most recent joint communication, BHR 5/2017, was sent on 22 May 2017. The Working Group acknowledges the responses from the Government of Bahrain in relation to these joint communications, including the most recent substantive reply, received on 21 July 2017 in relation to BHR 5/2017.

Analysis of violations

12. The source submits that Mr. Rajab's prosecution and conviction are contrary to international human rights law, and that he has been arbitrarily detained. His conviction and two-year sentence for engaging in television interviews are in violation of his rights to freedom of opinion under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant, rendering his detention arbitrary under category II.

13. The source also submits that Mr. Rajab's trial and hearings, held in absentia, are contrary to the international norms and standards of a fair trial, including under articles 9 and 10 of the Universal Declaration of Human Rights and article 9 of the Covenant. The source thus asserts that his detention could also be considered a category III deprivation of liberty.

14. The source further submits that the persistent prosecution and detention of Mr. Rajab by the Government of Bahrain are based on his status as a leading human rights defender, making his a detention for political purposes which is also arbitrary under category V.

Response from the Government

15. On 26 January 2018, the Working Group transmitted the allegations by the source to the Government under its regular communication procedure. The Working Group requested that the Government provide detailed information before 27 March 2018 about the current situation of Mr. Rajab, as well as any comments that it might have on the source's allegations.

16. The Working Group regrets that it did not receive a response from the Government to that communication. Nor did the Government request an extension of the time limit for its reply, as provided for in paragraph 16 of the Working Group's methods of work.

Updates from the source

17. On 16 April 2018, the source informed the Working Group that on 21 February 2018 the High Criminal Court had convicted Mr. Rajab and sentenced him to a five-year prison term on the charges relating to his tweets.

18. The three charges, relating to Mr. Rajab's second trial, of spreading false rumours in wartime, insulting governing authorities and insulting a foreign country, refer respectively to his Twitter comments criticizing the participation by Bahrain in the Saudi-led military campaign in Yemen; allegations of torture and ill-treatment in Bahraini prisons, including Jau Prison, as well as the silence and inaction of Bahraini authorities, including the Ministry of Interior's Ombudsman, the Special Investigation Unit of the Public Prosecution Office, and the National Institution for Human Rights; and the military intervention by Saudi Arabia in Yemen.

Discussion

19. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

20. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

21. The Working Group wishes to reaffirm that the Government has an obligation to respect, protect and fulfil the right to liberty of person and that any national law allowing deprivation of liberty should be made and implemented in compliance with the relevant international provisions set forth in the Universal Declaration of Human Rights, the Covenant and other applicable international or regional instruments.[6] Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group must assess whether such detention is also consistent with the relevant provisions of international human rights law.[7] The Working Group considers that it is entitled to assess the proceedings of a court and the law itself to determine whether they meet international standards.[8]

22. The Working Group also wishes to reiterate that it applies a heightened standard of review in cases where the rights to freedom of movement and residence, freedom of asylum, freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association, participation in political and public affairs, equality and non-discrimination, and protection of persons belonging to ethnic, religious or linguistic minorities, are restricted or where human rights defenders are involved.[9] Mr. Rajab's role as a prominent human rights defender in Bahrain who has been arrested, detained, prosecuted and released on multiple occasions since 2012 on charges relating to his human rights work requires the Working Group to undertake this kind of strict scrutiny.[10]

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[6] See General Assembly resolution 72/180, fifth preambular paragraph; Commission on Human Rights resolutions 1991/42, para. 2; and 1997/50, para. 15; Human Rights Council resolutions 6/4, para. 1 (a); and 10/9, para. 4 (b); and opinions No. 94/2017, para. 59; No. 88/2017, para. 32; No. 83/2017, paras. 51 and 70; No. 76/2017, para. 62; No. 28/2015, para. 41; and No. 41/2014, para. 24.

[7] See opinions No. 94/2017, para. 47; No. 76/2017, para. 49; No. 1/2003, para. 17; No. 5/1999, para. 15; and No. 1/1998, para. 13.

[8] See opinions No. 94/2017, para. 48; No. 88/2017, para. 24; No. 83/2017, para. 60; No. 76/2017, para. 50; and No. 33/2015, para. 80.

[9] See opinions No. 57/2017, para. 46; No. 41/2017, para. 95; No. 62/2012, para. 39; No. 54/2012, para. 29; and No. 64/2011, para. 20. Domestic authorities and international supervisory bodies should apply the heightened standard of review of government action, especially when there are claims of a pattern of harassment (see opinion No. 39/2012, para. 45). See also General Assembly resolution 53/144, annex (Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms), art. 9 (3).

[10] Human rights defenders, in particular, have the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through those and other appropriate means, to draw public attention to such matters (see General Assembly

Category II

23. The Working Group recalls that the freedoms of opinion and expression as well as the freedoms of thought and conscience are fundamental human rights included in articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the Covenant.[11] The Government must respect, protect and fulfil the right to hold and express opinions, including those that are not in accordance with its official policy, and to think and manifest personal convictions at odds with its official ideology, under the peremptory norms (*jus cogens*) of customary international law.[12]

24. The Working Group notes that the Human Rights Committee, in its general comment No. 34 (2011) on the freedoms of opinion and expression, stated that restrictions on the freedom of expression must not be overbroad, conform to the principle of proportionality, be appropriate to achieve their protective function, be the least intrusive instrument among those which might achieve their protective function, and be proportionate to the interest to be protected.[13] It is worth noting that the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.

25. Moreover, the Human Rights Committee went on to express its concern regarding laws on disrespect for authority, protection of the honour of public officials, and criticism of institutions, such as the army or the administration.[14] The Committee also emphasized that the penalization of a media outlet, publishers or a journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.[15]

26. In the same vein, the Working Group notes that the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has reiterated that the right to freedom of expression includes expression of views and opinions that offend, shock or disturb.[16] In addition, the Human Rights Council, in paragraph 5 (p) (i) of its resolution 12/16, stated that restrictions on discussion of government policies and on political debate were not consistent with article 19 (3) of the Covenant.

27. With reference to its previous opinion in relation to the detention of Mr. Rajab, the Working Group reiterates that the courts of Bahrain, in order to ensure the right to a fair trial, would have to confront and rule on the matter of the constitutionality and legality of the law banning public demonstrations, and, in the present case, the restriction of freedom of expression. Denials of a universally accepted human right to freedom of opinion and expression should not be meekly condoned by a domestic court.[17]

28. In the present case, Mr. Rajab has been arrested, detained, prosecuted and imprisoned for allegedly spreading false news abroad which damages the national interest and for allegedly spreading false rumours in wartime, insulting governing authorities and insulting a foreign country — pursuant to articles 133, 134, 215 and 216 of the Penal Code.

29. The Working Group considers that these provisions of the Penal Code are so vague and overly broad that they could, as in the present case, result in penalties being imposed on individuals who had merely exercised their rights under international law. As the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law and can

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resolution 53/144, annex, art. 6 (c)). Human rights defenders have the right to investigate, gather information on and report on human rights violations (see opinion No. 8/2009), para. 18.

[11] See Human Rights Committee, *Yong-Joo Kang v. Republic of Korea* (CCPR/C/78/D/878/1999), para. 7.2. See also arts. 30 and 32 of the Arab Charter on Human Rights.

[12] See opinion No. 94/2017, para. 59; No. 88/2017, para. 32; No. 83/2017, para. 80; and No. 76/2017, para. 62.

[13] See para. 34.

[14] Ibid., para. 38.

[15] Ibid., para. 42.

[16] See A/HRC/17/27, para. 37.

[17] See opinion No. 12/2013, para. 40.

regulate his or her conduct accordingly.[18] In the present case, the application of vague and overly broad provisions adds weight to the Working Group's conclusion that Mr. Rajab's deprivation of liberty falls within category II. Moreover, the Working Group considers that, in some circumstances, laws may be so vague and overly broad that it is impossible to invoke a legal basis justifying the deprivation of liberty.

30. The Working Group therefore considers that Mr. Rajab's deprivation of liberty is arbitrary, as it resulted from his exercise of the rights or freedoms guaranteed under articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the Covenant, and falls within category II.

31. Given its finding that the deprivation of liberty of Mr. Rajab is arbitrary under category II, the Working Group wishes to emphasize that no such trial of Mr. Rajab should have taken place or take place in the future. However, he continues to be the subject of criminal proceedings, and the source has submitted arguments relating to violation of his right to a fair trial. The Working Group is of the opinion that its positive conclusion under category II suffices in the present case, and will not therefore consider the questions relating to the right to a fair trial.

Category V

32. The Working Group will now examine whether Mr. Rajab's deprivation of liberty constitutes illegal discrimination under international law and whether it therefore falls under category V.

33. First and foremost, the Working Group notes that Mr. Rajab is a prominent human rights activist and opposition leader serving as the President of the Bahrain Centre for Human Rights, a director of the Gulf Centre for Human Rights, Deputy Secretary-General of the International Federation for Human Rights, and a member of the Human Rights Watch Middle East and North Africa Advisory Committee, and was the former Chair of CARAM Asia. He has been the subject of numerous joint communications by special procedure mandate holders dating back to 2004, and he has been detained for his work on multiple occasions. In this respect, the Working Group recalls that it has held his deprivation of liberty by the Government for his public activities to be arbitrary on a previous occasion.[19]

34. In the discussion presented above concerning the application of category II to the present case, the Working Group has already established that Mr. Rajab's arrest, detention, prosecution and imprisonment resulted from his exercise of the right to freedom of thought and expression. When it is established that a deprivation of liberty has resulted from the active exercise of civil and political rights, there is a strong presumption that the deprivation of liberty also constitutes a violation of international law on the grounds of discrimination based on political or other views.[20]

35. The Working Group cannot help but notice that Mr. Rajab's political views and convictions are clearly at the centre of the present case and that the authorities have displayed an attitude towards him that can only be characterized as discriminatory; indeed, he has been the target of persecution, including deprivation of liberty, for many years and there is no other explanation for this except that he is exercising his right to express such views and convictions.

36. For these reasons, the Working Group considers that Mr. Rajab's deprivation of liberty constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant — on the grounds of discrimination based on political or other opinion, as well as on his status as a human rights defender — aimed towards and resulting in ignoring the equality of human beings. His deprivation of liberty therefore falls under category V.

[18] See, for example, opinion No. 41/2017, paras. 98–101.

[19] See opinion No. 12/2013.

[20] See opinion No. 88/2017, para. 43.

37. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for appropriate action. The Working Group also refers the case to the Assistant Secretary-General for Human Rights — the senior official designated by the Secretary-General to lead the efforts within the United Nations system to address intimidation and reprisals against those cooperating with the United Nations on human rights matters.

38. The present case is one of several brought before the Working Group in the past five years concerning the arbitrary deprivation of liberty of persons in Bahrain,[21] in which the Working Group has found the Government to be in violation of its human rights obligations. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.

Country visit to Bahrain

39. The Working Group reiterates that it would welcome the opportunity to conduct a country visit to Bahrain, in accordance with the request that it made on 17 January 2017, so that it can engage with the Government constructively and offer assistance in addressing the serious concerns that it has relating to arbitrary deprivation of liberty.[22]

Disposition

40. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Nabeel Ahmed Abdulrasool Rajab, being in contravention of articles 2, 3, 7, 9, 10, 11, 18 and 19 of the Universal Declaration of Human Rights and of articles 2, 9, 10, 14, 18, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories II and V.

41. The Working Group requests the Government of Bahrain to take the steps necessary to remedy the situation of Mr. Rajab without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

42. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Rajab immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

43. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Rajab and to take appropriate measures against those responsible for the violation of his rights.

44. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for appropriate action. The Working Group also refers the case to the Assistant Secretary-General for Human Rights — the senior official designated by the Secretary-General to lead the efforts within the United Nations system to address intimidation and reprisals against those cooperating with the United Nations on human matters.

[21] See opinions No. 55/2016, No. 35/2016, No. 41/2015, No. 23/2015, No. 37/2014, No. 34/2014, No. 27/2014, No. 25/2014, No. 22/2014, No. 1/2014 and No. 12/2013.

[22] See opinion No. 55/2016, para. 30.

Follow-up procedure

45. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Rajab has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Rajab;

(c) Whether an investigation has been conducted into the violation of Mr. Rajab's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Bahrain with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

46. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

47. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

48. The Government should disseminate through all available means the present opinion among all stakeholders.

49. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[23]

[*Adopted on 19 April 2018*]

[23] See Human Rights Council resolution 33/30, paras. 3 and 7.